

Date of decision: 22/01/96

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VALJI NADHANI ZALA vs THE DISTRICT MEGISTRATE
SURENDRANAGAR & ORS

Appearance:

Mr. Sudhansu S.Patel for Mr. Vijay H.Patel, Advocate for
Petitioner.

Mr. K.C.Shah, A.G.P. for the respondents.

Coram: J.M.Panchal, J.
(January 22, 1996)

ORAL JUDGMENT :-

The order of detention dated September 2, 1995 passed by the District Magistrate, Surendranagar, in exercise of powers conferred on him by sub-section(2) of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("the Act" for short) against the petitioner is subject matter of challenge in the present petition, which is filed under Article 226 of the Constitution.

The grounds of detention indicate that survey

no.170/1, situated at village Rozava, Taluka : Dasada, District : Surendranagar vested in the Government under the provisions of the Gujarat Agricultural Land Ceiling Act,1961. The petitioner had encroached upon the said land since 1981-82. The Deputy Collector by an order dated February 16,1993 allotted the said land to five persons under the provisions of section 21 of the Gujarat Agricultural Land Ceiling Act,1961. The petitioner did not hand over possession of land to the allottees. Under the circumstances, the order allotting land to five persons had to be cancelled. Thereafter, the Mamlatdar, Dasada by order dated December 12,1994 directed the petitioner to hand over possession of land to the Government. The petitioner failed to hand over possession to the Government. On the basis of the revenue record pertaining to survey no.170/1 situated at village Rozava Taluka : Dasada, District : Surendranagar and orders passed by the competent authorities as well as on the basis of the statements of seven witnesses, the detaining authority came to the conclusion that the detenu is a property grabber within the definition of section 2(h) of the Act and his activities as a property grabber disturbed maintenance of public order. The detaining authority, therefore, with a view to preventing the detenu from acting in a manner prejudicial to maintenance of public order, passed the impugned order of detention.

It is not in dispute that the procedural requirements enjoined by the Act and Article 22(5) of the Constitution, have been complied with by the detaining authority, Advisory Board and the State Government.

Several contentions have been urged by the learned Counsel for the petitioner while assailing validity of the order of detention. However, it is not necessary to refer to all of them, except one which in my opinion merits acceptance.

Learned Counsel for the petitioner submitted that pages nos.9, 15, 16 & 65 of the compilation of documents supplied to the detenu are not legible and as right of the detenu to make effective representation against the order of detention which is guaranteed under Article 22(5) of the Constitution is infringed, the continued detention of the detenu should be held to be illegal.

Learned Counsel for the petitioner has produced compilation of documents supplied to the detenu for perusal of the Court. A bare perusal of the documents supplied to the detenu indicates that pages nos.9,15,16 and 65 are not legible. On page no.9 there is order dated May 16,1981 passed by the Additional Mamlatdar and A.L.T. pertaining to survey no.170/1, situated at village Rozava. Similarly, on pages no.15 & 16 there is

another order dated April 23, 1982 passed by the Addl.Mamlatdar and A.L.T. with respect to survey no.170/1 situated at village Rozava. On page 65 there is an application dated January 6,1995 and it is difficult to make as to by whom the said application is made. The fact that the above referred to documents were taken into consideration by the detaining authority together with other materials for the purpose of passing the order of detention, is not in dispute. The compilation of documents was also shown to the learned Counsel for the respondents. Mr. K.C.Shah, learned A.G.P. appearing for the respondents has also fairly stated that pages nos.9,15,16 and 65 of the compilation of documents supplied to the detenu are not legible. Having regard to the nature and the extent of illegibility, I am of the view that the right of the detenu to make effective representation against the order of detention, which is guaranteed under Article 22(5) of the Constitution is infringed and the continued detention of the detenu has become illegal.

For the foregoing reasons, the petition succeeds. The continued detention of the detenu is held to be illegal. The respondents are directed to release the detenu immediately unless his presence is needed with reference to any other case. Rule is made absolute accordingly, with no order as to costs.

The office is directed to send copy of writ to the Superintendent, Rajkot District Jail, Rajkot also.